

**FILED**

**JUN 19 2006**

**CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JORGE CABALLERO-VILLEDA,

Defendant - Appellant.

No. 05-10192

D.C. No. CR-04-00136-LRH

MEMORANDUM<sup>\*</sup>

Appeal from the United States District Court  
for the District of Nevada  
Larry R. Hicks, District Judge, Presiding

Submitted June 12, 2006<sup>\*\*</sup>

Before: KLEINFELD, PAEZ, and BERZON, Circuit Judges.

Jorge Caballero-Villeda appeals from the 46-month sentence imposed following his guilty plea conviction for being a deported alien found in the United

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<sup>\*</sup> This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

<sup>\*\*</sup> This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

States in violation of 8 U.S.C. § 1326. We have jurisdiction pursuant to 28 U.S.C. § 1291.

Caballero-Villeda contends that under *United States v. Booker*, 543 U.S. 220 (2005), the fact of his prior conviction and that it occurred before his deportation needed to be charged in the indictment and proven to a jury beyond a reasonable doubt. This argument is foreclosed by *United States v. Esparza-Gonzalez*, 422 F.3d 897, 907 (9th Cir. 2005), and *United States v. Rodriguez-Lara*, 421 F.3d 932, 949-50 (9th Cir. 2005).

**AFFIRMED.**